said: "Such a rule could not be tolerated, and is without foundation in the law. . . . In general, the waiver of any legal right at the request of another party is a sufficient consideration for a promise." It is satisfactory to notice that the attempt to narrow the meaning of the term "detriment" has been so decidedly overruled.

THE RIGHT TO PRIVACY. — In the article by Messrs. Warren and Brandeis on the Right to Privacy, published in this REVIEW last December, after a sketch of the many fictions and fewer open extensions by which the courts have met the modern demand for protection to the more ideal and intangible interests of the individual, the authors say:

"If the invasion of privacy constitutes a legal *injuria*, the elements for demanding redress exist, since already the value of mental suffering, caused by an act wrongful in itself, is recognized as a basis for compensation.

"The right of one who has remained a private individual to prevent his public portraiture presents the simplest case for such extension."

In Judge O'Brien's decision given last month, in the case of *Schuyler* v. *Curtis, Donlevy and others*, this hinted prophecy has its fulfilment. Mrs. George Schuyler, though largely interested in private charities, had never in any way entered public life. On her death, some zealots known as the "Woman's Memorial Fund Association" undertook to commemorate her good deeds by a statue of her, to be designated "The Typical Philanthropist," and placed in Chicago in '93 as a companion piece to a bust of the well-known agitator, Susan B. Anthony, to be called "The Typical Reformer." The action to prevent the intended celebration was brought by Mrs. Schuyler's nephew, in behalf of all her nearest relatives.

Judge O'Brien grants the injunction strictly on the ground that Mrs. Schuyler had never acted in other than a private character, and that such a person has rights which are lost by any one voluntarily entering public life. That no reported decision has hitherto gone so far in protecting the right to privacy Judge O'Brien freely recognizes; but he feels that the tendency to extend the law in the direction of affording the most complete redress for injury to individual rights makes the new step an easy one.

To believers in the practical utility of an increased scientific study of the general theories of law it will be interesting to notice that Judge O'Brien quotes at marked length from the article of Messrs. Warren and Brandeis, which he calls "an able summary of the extension and development of the law of individual rights, which well deserves and will repay the perusal of every lawyer," and which seems to be almost the basis of his decision that the right to which recent cases have been more and more, under various names, giving protection is the right to privacy.[1]

REVERSAL OF DECISION IN WATUPPA POND CASES. — It is interesting to note that the decision in the Watuppa Pond cases has been reversed on a rehearing. These cases, which were decided by the Supreme Court of Massachusetts in 1888, reported in 147 Mass. 548, are of great interest. The point decided — by a bare majority of four

[1] See 4 Harv. L. R. 193.

to three — was that the Commonwealth has the absolute right to the waters of our great ponds, free from any duties to the riparian owners on the streams forming the outlet; that it may grant to a city the right to take the water, and the lower riparian owners can claim no compensation for the consequent injury to them. For interesting articles on both sides of the question, see 2 Harvard Law Review, 195 and 316.

In view of the importance and difficulty of the question, it is a disappointment to find that on the rehearing the court expressly refuses to reconsider its decision, and bases the reversal solely on the fact, which is now made to appear for the first time, that the plaintiffs' predecessors acquired title to these ponds by a grant prior to the date when the Colonial Ordinance of 1647, on which the title of the Commonwealth to the great ponds is based, became law. The Ordinance could, of course, have no effect on the existing private ownership, and therefore the Commonwealth never acquired title to these particular ponds, and its grantee, the City of Fall River, is enjoined from taking the water.

The general principle laid down by the former decision, as stated above, remains, however the law of Massachusetts.

BOTH graduates and present members of the school will doubtless be interested to hear that the degree of LL.D. has recently been conferred upon Prof. James B. Thayer by the Iowa State University.

RECENT CASES.

[These cases are selected from the current English and American decisions not yet regularly reported, for the purpose of giving the latest and most progressive work of the court. No pains are spared in selecting *all* the cases, comparatively few in number, which disclose the general progress and tendencies of the law. When such cases are particularly suggestive, comments and references are added, if practicable.]

ADMINISTRATORS — PERSONAL LIABILITY. — An administrator recovered a judgment and, after appeal was barred, waived his advantage and allowed the same to be taken. The appellate court reversed the judgment, and refused a new trial, on the ground that the proof showed no cause of action. *Held*, that he was not obliged to insist on the technicality, and was not personally liable to the estate for the amount of the judgment. *McGuire* v. *Rogers*, 21 Atl. Rep. 723 (Md.).

The reasoning of the court is that an administrator is not obliged to insist upon or set up a legal right when justice does not require it. In accordance with this principle it is generally held that an administrator may waive the Statute of Limitations. The present case is interesting as indicating that the right to waive will be extended to other defences concerning which the law is as yet unsettled. See Williams on Executors, 7th edition, p. 1801; Woerner's Law of Administration, pp. 841, 843; 15 Mass. 8, note.

AGENCY — FELLOW-SERVANTS — SEPARATE DEPARTMENTS. — One who is employed by a railroad company, under a foreman, to make repairs in its repair-shops and on cars standing in its yards is not a fellow-servant of a switchman who, under orders of the yard-master, directs the movement of cars in the yard. *Pool* v. *Southern Pac. R. Co.*, 26 Pac. Rep. 654 (Utah).

AGENCY — ORAL AGREEMENT TO EXCHANGE — PART PERFORMANCE — STATUTE OF FRAUDS. — In an action for specific performance, the evidence showed that defendant placed the property in the hands of an agent to sell or exchange, and by his efforts met plaintiff, and agreed orally to exchange with him. Plaintiff left a deed with the agent, but defendant refused to accept it. *Held*, that a deliv-